

REMARKS/ARGUMENTS

Claims 1-16 remain in this application.

Claims 17-18 have been added.

In response to the Office Action of March 31, 2011, Applicant requests re-examination and reconsideration of this application for patent pursuant to 35 U.S.C. 132.

Rejections under 35 USC 102(b)

Claims 1-16 stand rejected under 35 U.S.C. 102(b) as being anticipated by Bramlet (U.S. Patent 6,183,474 B1).

Regarding claim 1, the claims stand rejected over Bramlet, who is alleged to disclose a device (see Figures 45 and 46) comprising an elongated cannulated shaft with tang exit holes and at least one deployable tang. Bramlet further is alleged to disclose the device comprising an end cap bonded to one end of the shaft by a first bond (497; column 21 lines 48-64). Bramlet is further alleged to disclose the device comprising a tang body (463) slidably disposed in one end of the shaft, wherein the external surface of the tang body is congruently shaped to restrict movement of the tang body to the longitudinal axis of the cannulated shaft. Bramlet is further alleged to disclose a device wherein the at least one tang (460) includes a first end and a second end, wherein the first end is bonded to the tang body by a second bond. Bramlet is further alleged to disclose a device wherein the second end of the at least

one tang is capable of moving through one tang exit hole in the cannulated shaft upon longitudinal movement of the tang body (see Figure 45). Bramlet is further alleged to disclose a device wherein the tang body further includes a link capable of cooperating with a tool to generate longitudinal movement of the tang body. Regarding claims 2 and 8, the Examiner takes the position that the device of Bramlet appears to be substantially identical to the device claimed, although produced by a different process, therefore the burden is upon the applicant to come forward with evidence establishing an unobvious difference between the two. In re Marosi, 218 USPQ 289 (Fed. Cir. 1983). Regarding claim 3, Bramlet is further alleged to disclose a device wherein the tang body is made from a first material, such as titanium, and the at least one tang is made from a second material, such as titanium (column 21 lines 1-3). The applicant does not require the two materials to be different materials. Therefore, the tang body and the at least one tang can be made from the same material and still read upon the claim limitation. Regarding claim 4, Bramlet is further alleged to disclose a device wherein the tang body is made from titanium and the at least one tang is also made from titanium. The tang body has a first stiffness and the at least one tang has a second stiffness, wherein the second stiffness is lower than the first stiffness. The examiner is interpreting the word stiffness to relate to the rigidity or flexibility of an object. Bramlet is further alleged to

disclose a device wherein the tang body is rigid and wherein the tangs are thinner and longer and therefore less rigid in order to deform through the exit holes and into the bone of the patient. Regarding claim 5, Bramlet is further alleged to disclose a device wherein the at least one tang has a rectilinear shape defining planar sides having dimension, wherein the dimensions affect the stiffness of the at least one tang. Regarding claim 6, Bramlet is further alleged to disclose a device wherein the external surface of the tang body includes planar sections, wherein the first end of the at least one tang is bonded to a planar section (Figure 53 of the reference).

Regarding claim 7, Bramlet is further alleged to disclose a device wherein the cannulated shaft and the end cap are made from titanium. Regarding claim 9, Bramlet is further alleged to disclose a device wherein the link comprises a central aperture through the tang body having internal threads capable of engaging a draw bolt. Regarding claim 10, Bramlet is further alleged to disclose the invention as claimed and discussed above. Regarding claim 11, Bramlet is further alleged to disclose a device wherein the cannulated shaft, the end cap, and the plurality of tangs are made from titanium, wherein the tangs have a stiffness that is less than the stiffness of the tang body as discussed above. Regarding claim 12, Bramlet is further alleged to disclose a device wherein the cannulated shaft includes a plurality of intersecting planar

internal walls and the tang body includes a plurality of intersection planar exterior surfaces, wherein the internal walls of the shaft engage the exterior surfaces of the tang body to limit the movement of the tang body in the longitudinal direction as discussed above. Regarding claim 13, Bramlet is further alleged to disclose a device wherein the number of tangs is equal to 4. Regarding the welding of the tangs to planar surfaces of the tang body the Examiner takes the position that the device of Bramlet appears to be substantially identical to the device claimed, although produced by a different process, therefore the burden is upon the applicant to come forward with evidence establishing an unobvious difference between the two. In re Marosi, 218 USPQ 289 (Fed. Cir. 1983). Regarding claims 14-16, the Examiner takes the position that the device of Bramlet appears to be substantially identical to the device claimed, although produced by a different process, therefore the burden is upon the applicant to come forward with evidence establishing an unobvious difference between the two. In re Marosi, 218 USPQ 289 (Fed. Cir. 1983).

It is well established that in order for a claim to be anticipated "each and every element as set forth in the claim must be found, either expressly or inherently described, in a single prior art reference". *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (MPEP 2131).

As instantly amended, all claims now call for:

a surgical system having an elongated cannulated shaft with tang exit holes and at least one deployable tang, a tang body slidably disposed in one end of said cannulated shaft, said at least one deployable tang formed separate from said tang body with a first end and a second end, said first end bonded to said tang body, said second end adapted to transit one tang exit hole in said cannulated shaft upon longitudinal movement of said tang body, whereby the use of different materials in the tang body and the deployable tangs is facilitated.

Basis for these amendments can be found in the original disclosure at page 10, lines 5-18. In accordance therewith, the claims have been corrected to refer to materials of differing degrees of "hardness" as opposed to "stiffness" as originally set forth. The claims also emphasize that the tang body and deployable tangs are separate and distinct elements which are joined together in the final product. This facilitates the ability to utilize distinct materials for each having differing physical properties, the only requirements being biocompatibility and an ability to be bonded together.

A thorough analysis of the Bramlet reference shows that the tang assembly, e.g. 830 in /fig. 87, always refers to a unitary construction wherein the tang body and tangs are of a single unitary construction.

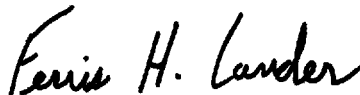
It is respectfully submitted that the rejection under 35 USC 102(b) should be vacated, since the claims as now amended call for the tang and tang body to be separate parts, which are attachable, e.g. by laser welding or the like, and that such construction facilitates the use of separate and distinct materials for the tang body and tangs respectfully. Such a construction is not anticipated by Bramlet, and it is respectfully submitted that it is also not suggested by the Bramlet disclosure. While Bramlet suggests alternative materials, per se, he fails to teach or disclose the concept of a separate tang body and tangs, made of distinct materials, and able to subsequently be formed into a unitary construction having particularly desired properties.

SUMMARY

In light of the foregoing remarks and amendment to the claims, it is respectfully submitted that the Examiner will now find the claims of the application allowable. Favorable reconsideration of the application is courteously requested. Should there be any remaining issues which can be resolved via an Examiner's Amendment; the Examiner is urged to call the undersigned in order to expedite the prosecution of this application.

The Commissioner for Patents is hereby authorized to charge any deficiency in any fees due or credit any overpayments in any fees paid on the filing to Deposit Account No. 13-0439.

Respectfully submitted,



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